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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

In re VESTAS WIND SYSTEMS A/S SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Case No. 3:11-cv-00585-MO CLASS ACTION LEAD PLAINTIFF'S MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff Plumbers and Pipefitters Local Union No. 630 Pension-Annuity Trust Fund, by and through its counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), respectfully submits this Memorandum in support of its unopposed motion for: (i) final approval of the settlement of this securities class action (the "Action"); (ii) approval of the proposed plan of allocation of settlement proceeds (the "Plan of Allocation"); and (iii) award of attorneys' fees and expenses.

I. PRELIMINARY STATEMENT

Under the terms of the settlement (the "Settlement"), set forth in the Stipulation of Settlement dated June 26, 2014 (the "Stipulation")[1], Vestas Wind Systems A/S ("Vestas" or the "Company") has caused to be paid $5.0 million in cash ("Settlement Amount") for the benefit of the Class. In addition, during the pendency of the Action, Vestas instituted a number of beneficial corporate governance and operational reforms. Lead Plaintiff's and Lead Counsel's efforts in bringing and prosecuting the Action were a factor in the institution of these changes. *See* Declaration of Alan H. MacDougall Regarding Vestas' Corporate Governance and Operational Reforms, submitted herewith. As discussed in greater detail in the accompanying Declaration of Trig R. Smith in Support of Final Approval of Class Action Settlement, Plan of Allocation of Settlement Proceeds, and Application for an Award of Attorneys' Fees and Expenses ("Smith Decl."), Lead Plaintiff faced substantial risks in the prosecution of the Action but has, nonetheless, obtained a notable result for the Class under all of the circumstances.

The result here is the culmination of over two years of vigorous litigation and settlement negotiations, and was achieved only after Lead Counsel, *inter alia*: (1) conducted detailed

[1] Capitalized terms not defined herein have the same meanings set forth in the Stipulation.

investigative interviews of witnesses, including former employees of Vestas; (2) filed detailed pleadings; (3) opposed Vestas' motion to dismiss the First Amended Complaint for Violation of the Federal Securities Laws; (4) conducted confirmatory discovery; and (5) negotiated the final terms of the Settlement as reflected in the Stipulation.[2] Lead Plaintiff's counsel and paraprofessionals have expended over 2,400 hours in the prosecution and resolution of the Action.

The $5.0 million Settlement Amount is a very good recovery. According to a recent report by NERA for 2013 settlements with investor losses in the $20-$99 million range (Lead Counsel estimates that maximum damages in the Action are about $48 million), the median percentage recovery range was 4.8%-8.9% and the median settlement amount as a percentage of total investor losses for all 2013 settlements (excluding certain outliers) was 2.1%. Dr. Renzo Comolli & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2013 Full-Year Review*, at 32-33 (NERA Jan. 21, 2014) ("NERA Report"). Here, the Settlement as a percentage of estimated damages – approximately 10.4% – exceeds those results. The assessment that this Settlement is fair, reasonable, and adequate is further supported when evaluated in light of the many factual and legal challenges – including proving that Vestas acted with *scienter* and made Class Period misrepresentations of material facts that caused the Class' damages – which Lead Plaintiff would repeatedly face at pre-trial and trial stages. Importantly, the Settlement was also approved by Lead Plaintiff. *See* ¶4 of the Declaration of Roger Morgan in Support of Final Approval of Settlement,

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[2] The defendants named in the operative pleading are Vestas, Vestas-American Wind Technology, Inc. ("Vestas Americas"), Bent Erik Carlsen, Ditlev Engel, and Henrik Nørremark. *See* Doc. 73. In connection with this Settlement, Lead Plaintiff has filed a proposed Second Amended Complaint, which no longer names Vestas Americas, Bent Erik Carlsen, Ditlev Engel, and Henrik Nørremark as defendants. *See* Doc. 120. These defendants were dismissed without prejudice from the Action. Upon final approval of the Settlement, they will be dismissed with prejudice. *See* Doc. 117.

Plan of Allocation and Application for an Award of Attorneys' Fees ("Morgan Decl."), submitted herewith.

In deciding to settle this case for $5.0 million, Lead Plaintiff and Lead Counsel carefully considered the relative strengths and weaknesses of the parties' claims and defenses and the risks of continued litigation. While they believe that the claims asserted have merit, this case involved complex legal and factual questions and issues of proof regarding the essential elements of falsity, reliance, *scienter*, causation and damages, as well as defenses thereto. For instance, it is not assured that the Court would have accepted Lead Plaintiff's argument that the Court had subject matter jurisdiction over a case involving a foreign issuer's unsponsored ADRs trading on the over-the-counter market in the United States. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 273 (2010) (holding that Section 10(b) of the Securities and Exchange Act of 1934 only reaches the purchase and sale of securities listed on an "American stock exchange, and the purchase or sale of any other security in the United States"). In addition, Vestas undoubtedly would have argued that the Company's unsponsored ADRs did not trade in an efficient market during the Class Period thereby precluding certification of a litigation class. *See Halliburton Co. v. Erica P. John Fund, Inc.*, ___ U.S. ___, 134 S. Ct. 2398, 2407-13 (2014) (at class certification, plaintiffs must submit evidence of an efficient market to be entitled to the "fraud-on-the-market" presumption of reliance). These risks posed a significant restraint on Lead Plaintiff's ability to obtain a better recovery in the future and support a finding that the Settlement is reasonable, adequate and fair.

The reaction of the Class, to date, also supports approval of the Settlement. Pursuant to the Court's Revised Order Preliminarily Approving Proposed Settlement ("Preliminary Approval Order") (Doc. 126), to date, copies of the Notice of: (1) Pendency and Proposed Settlement of Class Action and (2) Hearing on Proposed Settlement ("Notice") have been mailed to 80,385 potential

members of the Class and their nominees.[3] The Notice, attached to the Sylvester Declaration as Exhibit A, contains a description of the nature and procedural history of the case, as well as the material terms of the Settlement, including: (i) the estimated average distribution per share; (ii) how the Net Settlement Amount will be allocated among Class Members; (iii) a description of the claims that will be released; and (iv) the right and mechanism for Class Members to request exclusion from the Class or object to the Settlement, the Plan of Allocation, or Lead Counsel's request for attorneys' fees and expenses. As of the date of this Memorandum, no objections to any of these matters have been received and only four persons have requested exclusion from the Class.[4]

Lead Plaintiff also asks the Court to affirm its certification of the Class of all persons, entities, or legal beneficiaries or participants in any entities who purchased or otherwise acquired Vestas ADRs or common stock (ordinary shares) in U.S. domestic transactions between February 11, 2009 and February 9, 2012, inclusive (the "Class Period"). Nothing between the Court's July 30, 2014 Preliminary Approval Order, which certified a Class for settlement purposes, and the date of this filing has changed that would warrant a different result.

Lead Plaintiff requests that the Court approve the Plan of Allocation. The plan will govern how Class Members' claims will be calculated and how money will be distributed to claimants. The plan was arrived at with the assistance of Lead Plaintiff's damages consultant and follows the

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[3] *See* ¶10 of the accompanying Declaration of Carole K. Sylvester Re A) Mailing of the Notice of: (1) Pendency and Proposed Settlement of Class Action and (2) Hearing on Proposed Settlement and the Claim Form and Release, B) Publication of Summary Notice, and C) Internet Posting ("Sylvester Decl.").

[4] The deadline for submitting objections or requests for exclusion is November 19, 2014. Lead Counsel will address any objections filed in a submission to be filed with the Court on or before December 2, 2014.

damage theory developed for the case. *See* Smith Decl., ¶¶60-63. Moreover, it is based on damage methodology calculations used in allocation plans in numerous securities class action settlements.

Lead Plaintiff and Lead Counsel also request that the Court grant the application for attorneys' fees and expenses. As compensation for its efforts, Lead Counsel seeks an award of: (i) attorneys' fees of 25% of the Settlement Amount; and (ii) $250,000 for expenses or charges in connection with the prosecution and resolution of the case. The request for a 25% fee and $250,000 in expenses has been approved by Lead Plaintiff, an institutional investor with a significant financial stake in the outcome of this case. *See* Morgan Decl., ¶5. The request, therefore, is presumptively reasonable. It is also within the normal range of percentage awards frequently made in contingent fee matters of this type in this Circuit and others, and is based on the appropriate method (*i.e.*, a percentage award) of compensating counsel for the result they have achieved. *See Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) (setting 25% of a common fund as the "benchmark" award for attorneys' fees).[5] In addition, the amount of both the fees and expenses requested are below the amounts actually devoted to the prosecution and resolution of the case.

In light of Lead Counsel's and Lead Plaintiff's informed assessment of the strengths and weaknesses of the parties' claims and defenses, the absence of opposition to the Settlement, and the considerable risks and delays associated with continued litigation and trial, Lead Counsel and Lead Plaintiff believe that the Settlement is fair, reasonable, and adequate. Accordingly, they respectfully request that the Court grant final approval of the Settlement. The Plan of Allocation is a fair and reasonable method for distributing the Net Settlement Amount to Class Members, and warrants the

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[5] The percentage method also comports with the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which states "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6).

Court's final approval. Finally, Lead Plaintiff and Lead Counsel believe that the application for attorneys' fees and expenses is reasonable and should be approved by the Court.

II. HISTORY AND BACKGROUND OF THE CASE

Vestas, a Danish company, is one of the world's largest developers, manufacturers, sellers and maintainers of wind turbines and wind power systems. The Second Amended Complaint for Violation of the Federal Securities Laws ("Complaint") (Doc. 120) alleges that Vestas made false statements and omitted material facts about its compliance with revenue-recognition rules and the impact of those rules on the Company's reported revenue and earnings. The principle claim is that Vestas did not properly account for changes in the interpretation of International Accounting Standards that allegedly prohibited Vestas from recognizing revenue and earnings from certain types of contracts until the projects had been completed and all risk had been transferred to customers. The Complaint claims that Vestas knew of the new accounting interpretation (IFRIC 15) before and during the Class Period, but ignored it and misleadingly told investors until 2010 that IFRIC 15 was not expected to have a material impact on Vestas' financial reporting. In addition, the Complaint alleges that Vestas did not properly account for obsolete or otherwise unusable inventory, that it delivered defective products to customers, and lacked appropriate testing and commissioning procedures. Lead Plaintiff alleged that these misstatements and omissions caused the prices of Vestas' securities to be artificially inflated and that, when the truth was revealed, these prices declined to the damage of the Class. *See* Smith Decl., ¶¶6, 7, 24, 25.

Lead Plaintiff respectfully refers the Court to the accompanying Smith Declaration for a discussion of, *inter alia*, the factual and procedural history of this case, the litigation efforts of Lead Counsel, the significant risks of continued litigation, and the arm's-length negotiations leading to the Settlement. *Id.*, ¶¶3-5, 8-11, 16-59.

III. THE STANDARDS FOR JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS

It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Class actions readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation. In addition, "there is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). In deciding whether to approve the settlement of a securities class action under Federal Rule of Civil Procedure 23(e), the Court must find the Settlement to be "fair, adequate and reasonable."[6] The Ninth Circuit has set forth factors which may be considered in evaluating the fairness of a class action settlement:

> Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Officers for Justice, 688 F.2d at 625 (citations omitted); *accord Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1387 (D. Ariz. 1989), *aff'd sub nom. Class Plaintiffs v. Seattle*, 955 F.2d 1268 (9th Cir. 1992). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated

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[6] *See, e.g.*, *Officers for Justice*, 688 F.2d at 625; *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977).

by the nature of the claims advanced, the types of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625.

The Court must exercise "sound discretion" in approving a settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Torrisi*, 8 F.3d at 1375. In exercising this discretion, however:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Officers for Justice, 688 F.2d at 625. The Ninth Circuit "has long deferred to the private consensual decision of the parties." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). The Ninth Circuit defines the limits of the inquiry to be made in the following manner:

> Therefore, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what ***might*** have been achieved by the negotiators.

Officers for Justice, 688 F.2d at 625 (emphasis in original).

Moreover, Lead Counsel's decision to settle on the terms presented is entitled to some deference. *See Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979); *Ellis*, 87 F.R.D. at 18 ("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").[7] The presumption of reasonableness in this matter is warranted because the Settlement is the product of informed, arm's-length and mediator-assisted

[7] *Accord Malchman v. Davis*, 761 F.2d 893, 903 (2d Cir. 1985); *Milstein v. Huck*, 600 F. Supp. 254, 262 (E.D.N.Y. 1984).

negotiations. *Hughes v. Microsoft Corp.*, No. C98-1646C, 2001 U.S. Dist. LEXIS 5976, at *17, *21 (W.D. Wash. Mar. 26, 2001). Here, it is the considered judgment of experienced counsel, after vigorous litigation and settlement negotiations, that the Settlement is a very good result for the Class.

In sum, the task before the Court is to ascertain whether the Settlement is within a range that responsible and experienced attorneys could accept, considering all relevant risk factors of litigation. As demonstrated below and in the Smith Declaration, the Settlement is fair, reasonable and adequate and, thus, warrants the Court's approval.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Strength of Lead Plaintiff's Case and the Risks of Continued Litigation

The strength of a plaintiff's case on the merits, in light of the risks of proceeding with litigation, is a factor for consideration in determining whether a proposed settlement is reasonable. *See Officers for Justice*, 688 F.2d at 625. Here, Lead Plaintiff's case was primarily based on the fact that Vestas' Class Period financial statements were, in Lead Counsel's view, admitted to be false by virtue of the Company's restatement of earnings in the magnitude of hundreds-of-millions of Euros. Further, based on publicly available documents and an extensive investigation of the facts, Lead Plaintiff is confident that it would be able to meet its burden in proving that the Company either knew or recklessly disregarded that its Class Period accounting for billions of Euros of wind turbine sales violated International Accounting Standards. In short, Lead Plaintiff and Lead Counsel believe that the case against Vestas is meritorious.

As with any case, however, Lead Counsel is also mindful of the potential weaknesses in the case and the uncertainties inherent in the continued prosecution of it. For instance, while Lead Plaintiff and Lead Counsel believe that the evidence would support the allegations, and would have

supported class certification and the denial of any motion for summary judgment, there still remained the possibility the Court would disagree and dismiss the Action. Further, Vestas has maintained its factual and legal defenses and has adamantly denied liability. Thus, there is the potential that the proposed Class would recover nothing if the Court or a jury sided with Vestas on even one of its numerous factual and legal defenses.

Defendant's motion to dismiss the operative pleading remains pending and, therefore, poses a significant risk that the Action could have been dismissed altogether. Even if Lead Plaintiff defeated the motion to dismiss and proceeded to class certification, it was anticipated that the parties would engage in additional expansive and costly discovery in order to support and/or oppose dispositive motions on the parties' claims and defenses.

Lead Plaintiff would then commit significant time and expense in preparing the case for trial, where, notwithstanding its belief in the merits of the claims asserted, there would be a substantial risk that Lead Plaintiff would be unable to establish liability or that damages would be less than the amount currently guaranteed by the Settlement. For instance, there was a risk that Lead Plaintiff would not be able to prove *scienter* – *i.e.*, that Vestas acted with knowledge of or with recklessness as to the alleged falsity of the statements and omissions – at trial. Thus, it was possible that Lead Plaintiff would depose a significant number of current and former Vestas officers and employees with knowledge about the facts, and yet adduce insufficient evidence to satisfy its burden of proof on a key element of the fraud claim.

Lead Plaintiff also faced a risk that a jury could ultimately find that the alleged false statements were not misleading or were otherwise non-actionable projections and/or immaterial expressions of corporate optimism. While Lead Plaintiff would have argued that the Class Period statements were not only false, but also reflected statements of fact material to a reasonable investor

making an investment decision, there was a possibility a jury could reach an opposite conclusion. Although Lead Plaintiff believes that sufficient documentary evidence existed to demonstrate that Vestas' Class Period financial results were false and misleading, the Company would undoubtedly counter that the evidence established the exact opposite.

There was also a risk that Lead Plaintiff might not be able to prove loss causation and damages at trial. A plaintiff alleging securities fraud must prove that a defendant's fraud caused an economic loss. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342 (2005). Lead Plaintiff believes that at trial, through expert testimony, it would be able to demonstrate loss causation as to the challenged statements, and corrective disclosures, throughout the Class Period. However, Lead Plaintiff recognizes that the Company would present expert testimony purporting to demonstrate the absence of a causal link between the various stock price declines and those disclosures. As a result, Vestas would certainly argue that Lead Plaintiff could not prove the loss causation and damage elements of the §10(b) fraud claim. Because the determination of loss causation and damages is a complicated process requiring expert testimony, compounding the above factors was the risk that the Court could grant a motion by the Company to exclude the opinion and testimony of Lead Plaintiff's loss causation and damages expert at trial. And, even if Lead Plaintiff's expert survived a *Daubert* motion, the loss causation and damages assessments of the parties' experts would be reduced to a risky "battle of experts." If the jury agreed with Vestas, the Class' damages could be significantly reduced, or eliminated.

Further, the Supreme Court recently altered the relative burdens of proof concerning the fraud-on-the-market presumption of reliance in securities fraud cases. *See Halliburton*, 134 S. Ct. 2398 (holding that a defendant may rebut the fraud-on-the-market presumption of reliance at any time during the litigation by showing the alleged fraud had no "price impact" on the security in

question). Certainly, Vestas would have raised the issue of price impact and market efficiency by no later than the class certification stage of the Action. This factual issue would have required costly and time-consuming expert analysis.

Even if Lead Plaintiff prevailed at trial, there was the virtual certainty that Vestas would appeal the verdict and any award of damages. The appeals process would likely span several years, during which time the proposed Class would receive no distribution of any damage award. In addition, an appeal of a verdict would carry with it the risk of reversal, in which case the proposed Class would receive no distribution despite having prevailed on the claims at trial. This risk is very real in the context of complex securities class action litigation. For example, in *Backman v. Polaroid Corp.*, 910 F.2d 10, 18 (1st Cir. 1990), the class won a jury verdict and a motion for J.N.O.V. was denied, but on appeal the judgment was reversed and the case dismissed. *See also W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced."), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 309 (2d Cir. 1979) (reversing $87 million judgment after trial); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing on appeal $81 million jury verdict and dismissing securities action with prejudice); *AUSA Life Ins. Co. v. Ernst & Young*, 39 F. App'x 667 (2d Cir. 2002) (affirming district court's dismissal after a full bench trial and earlier appeal and remand); *Winkler v. NRD Mining, Ltd.*, 198 F.R.D. 355 (E.D.N.Y.) (granting defendants' motion for judgment as a matter of law after jury verdict for plaintiffs), *aff'd sub nom. Winkler v. Wigley*, 242 F.3d 369 (2d Cir. 2000).

Indeed, Lead Counsel's experience in *Jaffe v. Household Int'l*, No. 02-C-05893 (N.D. Ill.), is illustrative of the risks and delays inherent in litigation such as this, even after a jury verdict in favor of plaintiffs and the class. On May 7, 2009, following a six-week trial, the jury in *Household*

returned a verdict finding that the defendants had violated the federal securities laws and that members of the class suffered damages of up to $23.00 per share. *See Household*, No. 02-cv-5893 (N.D. Ill. May 7, 2009), Doc. 1611. The jury also found no liability for the first 19 months of the class period. *Id.* Subsequently, there has been numerous post-verdict motions, extensive motion practice, discovery related to class members' claims and an appeal to the Seventh Circuit. As a result, over five years after a favorable verdict, no class member has recovered any damages suffered.

B. The Settlement Is the Result of Arm's-Length Negotiations

Between January 5, 2012 and February 17, 2012, the parties participated in three arm's-length and formal mediation sessions before the late, former U.S. District Judge Nicholas H. Politan (D.N.J.). The parties were unable to resolve the case after these lengthy mediation sessions. During these sessions, the parties broadly discussed the relative strengths and weaknesses of their respective positions. While these early attempts to resolve the litigation were not successful, over the balance of the year the parties continued to discuss a potential framework for a resolution of the Action. Between February and December, 2012, the parties' counsel continued to exchange drafts of documents concerning a potential global settlement and proposed corporate reforms that would address allegations implicating the Company's internal controls over financial reporting and other issues. As part of this effort, Lead Counsel consulted with experts specializing in corporate reform and explored establishing legal foundations necessary for a resolution of both U.S. and non-U.S. claims. The parties, moreover, continued to educate themselves regarding the facts and their respective claims and defenses. Ultimately, the parties informed Magistrate Judge Acosta that, despite these extensive efforts, they were unable to finalize a global settlement. *See* Smith Decl., ¶23.

In September 2013, the parties engaged in two additional mediation sessions before former California Superior Court Judge Daniel Weinstein. As a result of these sessions, a general outline for the final resolution of this Action was agreed to by the parties' counsel, subject to the preparation and execution of settlement documents and approval by their respective clients. In light of the numerous mediation sessions conducted by former judges who are highly regarded mediators, the Settlement clearly is not a product of collusion by the parties. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000).

On June 27, 2014, the parties filed the Stipulation of Settlement with the Court. *See* Doc. 117. On the same day, Lead Plaintiff filed its Unopposed Motion for Preliminary Approval of Proposed Settlement for Securities Class Action. *See* Docs. 115-116. On July 30, 2014, this Court issued an order preliminarily approving the Settlement. *See* Doc. 126.

C. Reaction of the Proposed Class Supports Approval of the Settlement

Pursuant to the Court's Preliminary Approval Order (Doc. 126), commencing on August 15, 2014, the Court-approved Notice has been mailed to all Class Members who could be identified with reasonable effort and their nominees. To date, a total of 80,385 Notices have been mailed. A summary notice was published in *The Wall Street Journal* and *Investor's Business Daily* on August 22, 2014 and over the *PR Newswire* on August 22, 2014 and *Business Wire* on August 25, 2014. Sylvester Decl., ¶¶10, 13. The Notice advised the Class Members of the terms of both the Settlement and the Plan of Allocation. Comments on or objections to the Settlement, are due on or before November 19, 2014. Lead Plaintiff will respond to any such filings on or before December 2, 2014. To date, there have been no objections to the Settlement or Plan of Allocation.

D. The Settlement Appropriately Balances the Risks of Litigation and the Benefit to the Class of a Certain Recovery

To determine whether a settlement is fair, reasonable and adequate, a court must balance the benefits afforded to members of the class by the settlement and the immediacy and certainty of a recovery against the continuing risks of litigation. *See Mego Fin.*, 213 F.3d at 458; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd*, 485 F. Supp. at 616-17; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 741 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). In other words, "'[t]he Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, "It has been held proper to take the bird in hand instead of a prospective flock in the bush."'" *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (citation omitted). In the context of approving class action settlements, courts balancing these factors have recognized "that stockholder litigation is notably difficult and notoriously uncertain." *Lewis v. Newman*, 59 F.R.D. 525, 528 (S.D.N.Y. 1973); *see also Republic Nat'l Life Ins. Co. v. Beasley*, 73 F.R.D. 658, 667 (S.D.N.Y. 1977). This is even more so today in the post-PSLRA environment. *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA").

While Lead Counsel believes the claims are meritorious, it acknowledges the risks and uncertainties that could be exploited by Vestas in dispositive motions, at trial and/or on appeal. Indeed, Lead Counsel is aware of many cases that continued to be prosecuted in the belief they were meritorious, but were lost without recovery at a later stage in the proceedings. This Settlement

reflects the risks of continuing and/or completing litigation involving numerous legal and factual issues, as well as the risk of being unable to obtain any recovery for the benefit of the Class.

The risks of continued litigation, weighed against the substantial and certain recovery for the proposed Class, confirms that the Settlement is reasonable. Even if Lead Plaintiff prevailed at trial and through any appeals, there was no guarantee that a jury verdict would exceed the Settlement Amount and it would have taken years before appeals were resolved and the Class received any payment.

E. Balancing the Certainty of an Immediate Recovery Against the Expense and Likely Duration of Continued Litigation Favors Settlement

The immediacy and certainty of a recovery is a factor for the Court to consider in determining whether the Settlement is fair, adequate, and reasonable. *E.g.*, *Girsh*, 521 F.2d at 157. Courts consistently have held that "[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." *Milstein*, 600 F. Supp. at 267; *see also Officers for Justice*, 688 F.2d at 626; *Boyd*, 485 F. Supp. at 616-17; *Bullock v. Adm'r of Estate of Kircher*, 84 F.R.D. 1, 10 (D.N.J. 1979). Here, Lead Counsel secured a significant and certain recovery of $5.0 million for the Class while Vestas' motion to dismiss was pending. Absent this Settlement, the case would have proceeded to dispositive motions and potentially discovery and trial at considerable expense without the proposed Class receiving the certain and substantial benefit of the Settlement.

Vestas is represented by well-respected and highly capable counsel and has demonstrated a commitment to defend this case through and beyond trial, if necessary. If not for this Settlement, the case would have continued to be vigorously contested by all parties. The expense and time commitment required by continuing litigation would have been substantial. *See In re Chambers*

Dev. Sec. Litig., 912 F. Supp. 822, 837 (W.D. Pa. 1995) ("It is safe to say, in a case of this complexity, the end of that road might be miles and years away."). The Settlement eliminates the possibility that the Class would ultimately receive less or no recovery at all.

As the Ninth Circuit has made clear, the very essence of a settlement agreement is compromise, "'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (citation omitted).

> "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation."

Id. (citation omitted); *Ellis*, 87 F.R.D. at 19 (as a *quid pro quo* for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands). Accordingly, any argument that the Class potentially might achieve a greater recovery at a later stage in the proceedings does not preclude the Court from finding that the Settlement is within a "range of reasonableness" and, therefore, appropriate for approval. *E.g.*, *Warner Commc'ns*, 618 F. Supp. at 745.

F. The Stage of the Proceedings

The stage of the proceedings and the amount of discovery completed is another factor which the courts consider in determining the fairness, reasonableness, and adequacy of a settlement. *Officers for Justice*, 688 F.2d at 625. The Ninth Circuit has held that "'in the context of class action settlements, "formal discovery is not a necessary ticket to the bargaining table" where the parties have sufficient information to make an informed decision about settlement.'" *Mego Fin.*, 213 F.3d at 459 (citations omitted). Here, the proceedings have reached a stage where Lead Counsel and Lead Plaintiff could make an informed and intelligent evaluation of the Action and propriety of this Settlement.

Lead Counsel conducted an extensive, informal investigation through numerous witness interviews regarding the matters alleged, as well as confirmatory discovery that included access to over 86,000 pages of documents made available by Vestas and a review and analysis of key documents included in this informal production. In fact, Lead Plaintiff's considerable investigative efforts spanned from June 2011 through June 2013. In addition, Lead Counsel fully briefed a motion to dismiss, which further outlined the factual and legal challenges (and the attendant risks) of this case. The parties engaged in expansive mediation with two different retired judges, where the strengths and weaknesses of the parties' claims and defenses were fully explored. Accordingly, there is no question that the parties reached agreement on the Settlement with an informed understanding of the legal and factual issues in the case. *See Mego Fin.*, 213 F.3d at 459.

G. The Experience and View of Counsel

In determining whether a settlement should be approved, courts generally place weight on the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. *See Nat'l Rural*, 221 F.R.D. at 528. Lead Counsel is a highly experienced and accomplished law firm specializing in class action securities cases. *See* Ex. F to the accompanying Declaration of Henry Rosen Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Rosen Decl."). Lead Counsel has vigorously prosecuted this case since 2011. Lead Counsel is intimately familiar with the facts and legal theories underpinning this case. In view of the risks involved in further litigation, Lead Counsel believes that the Settlement is in the best interest of the Class.

Key among those risks presented here were: (i) whether Lead Plaintiff could adequately plead and prove *scienter*; (ii) whether the statements made or facts allegedly omitted were material, false, misleading, or actionable; and (iii) the amount by which the prices of Vestas ADRs or

domestically traded common stock were artificially inflated (if at all) during the Class Period. There existed a risk that Lead Plaintiff would not have convinced a jury that Vestas acted with *scienter* or that the alleged misrepresentations and omissions were materially false or misleading when made. There was also a risk that even if Lead Plaintiff prevailed at trial, Vestas would appeal, which would take years to resolve and presented the risk of reversal of an otherwise favorable jury verdict. There was also the risk that, consistent with Vestas' contention on the point, the Court could have found it did not even have subject matter jurisdiction over the case.

Having considered the foregoing, and evaluating known and anticipated defenses, it is the informed judgment of Lead Counsel, based upon all proceedings to date and counsel's extensive experience in litigating shareholder class actions under the federal securities laws, that the Settlement is fair, reasonable and adequate, provides a meaningful recovery for, and is in the best interests of, the Class.

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Lead Plaintiff and Lead Counsel also seek approval of the Plan of Allocation (the "Plan"). The Plan was set forth in the Notice mailed to Class Members. Distribution under the Plan will properly pay the Net Settlement Amount to those Class Members who suffered losses as a result of the alleged misconduct, as opposed to losses caused by market, industry, or other non-fraud related company specific factors. Assessment of a plan of allocation under Rule 23 is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair and reasonable. *See Ikon*, 194 F.R.D. at 184; *Class Plaintiffs*, 955 F.2d at 1284; *Atlas v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 U.S. Dist. LEXIS 103035, at *13 (S.D. Cal. Nov. 4, 2009). District courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v.*

Able, 575 F.2d 1010, 1016 (2d Cir. 1978); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982).

The objective of a plan of allocation is to provide an equitable basis upon which to distribute the settlement fund among eligible class members. Thus, courts have approved distribution plans that allocate settlement proceeds according to the relative strengths and weaknesses of the claims. *See Warner Commc'ns*, 618 F. Supp. at 745; *Weinberger v. Kendrick*, 698 F.2d 61, 78 (2d Cir. 1982). Thus, "if one set of claims had a greater likelihood of ultimate success than another set of claims, it is appropriate to weigh 'distribution of the settlement . . . in favor of plaintiffs whose claims comprise the set' that was more likely to succeed." *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1396, 1411 (E.D.N.Y. 1985) (quoting *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 220 (5th Cir. 1981)), *aff'd in part and rev'd in part on other grounds*, 818 F.2d 179 (2d Cir. 1987). There is no requirement that a settlement must benefit all class members equally. *See Mego Fin.*, 213 F.3d at 461; *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1152 (8th Cir. 1999) (upholding distribution plan where class members received different levels of compensation and finding that no subgroup was treated unfairly); *S.C. Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1437 (D.S.C. 1990) (approving settlement where some class members did not share in recovery). An allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *White v. NFL*, 822 F. Supp. 1389, 1420 (D. Minn. 1993); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

Here, the Plan was based on Lead Plaintiff's damages consultant's analysis and reflects an assessment of the damages that Lead Plaintiff contends could have been recovered under the theories of liability in the case. Lead Plaintiff and Lead Counsel believe the Plan will result in a fair and

equitable distribution of the proceeds among Class Members who submit valid claims and, thus, it should be approved.

VI. AWARD OF ATTORNEYS' FEES

A. The Legal Standards Governing the Award of Attorneys' Fees in Common Fund Cases Support the Requested Award

For its efforts in creating a common fund for the benefit of the Class, Lead Counsel seeks a reasonable percentage of the fund as attorneys' fees. The percentage method of awarding fees has become an accepted, if not the prevailing, method for awarding fees in common fund cases in this Circuit and throughout the United States. It has long been recognized that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this doctrine is to avoid unjust enrichment so that "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) ("*WPPSS*"). This rule, known as the "common fund" doctrine, is firmly rooted in American case law. *See, e.g.*, *Trustees v. Greenough*, 105 U.S. 527 (1882); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885).[8]

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[8] In *Paul, Johnson*, 886 F.2d 268, the Ninth Circuit explained the principle underlying fee awards in common fund cases:

> Since the Supreme Court's 1885 decision in [*Central R.R.*, 113 U.S. 116], it is well settled that the lawyer who creates a common fund is allowed an ***extra*** reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit. The amount of such a reward is that which is deemed "reasonable" under the circumstances.

Id. at 271 (citations omitted, emphasis in original).

In this Circuit, a district court has discretion to award fees in common fund cases based on either the so-called lodestar/multiplier method or the percentage-of-fund method. *WPPSS*, 19 F.3d at 1296 (regardless of the method chosen, the fee must "be reasonable under the circumstances"). *Id.* at 1295. In *Paul, Johnson*, 886 F.2d 268, *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990), *Torrisi*, 8 F.3d 1370, and *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002), the Ninth Circuit expressly approved the use of the percentage method in common fund cases.

Since *Paul, Johnson* and its progeny were decided, district courts in this Circuit have almost uniformly shifted to the percentage method in awarding fees in class action settlements that create a "common fund." The rationale for compensating counsel in common fund cases on a percentage basis is sound. First, it is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery. Second, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. One of the nation's leading scholars in the field of class actions and attorneys' fees, Professor Charles Silver of the University of Texas School of Law, notes:

> The consensus that the contingent percentage approach creates a closer harmony of interests between class counsel and absent plaintiffs than the lodestar method is strikingly broad. It includes leading academics, researchers at the RAND Institute for Civil Justice, and many judges, including those who contributed to the Manual for Complex Litigation, the Report of the Federal Courts Study Committee, and the report of the Third Circuit Task Force. Indeed, it is difficult to find anyone who contends otherwise. No one writing in the field today is defending the lodestar on the ground that it minimizes conflicts between class counsel and absent claimants.
>
> In view of this, it is as clear as it possibly can be that judges should not apply the lodestar method in common fund class actions. The Due Process Clause requires them to minimize conflicts between absent claimants and their representatives. The contingent percentage approach accomplishes this.

Charles Silver, *Due Process and the Lodestar Method: You Can't Get There from Here*, 74 Tul. L. Rev. 1809, 1819-20 (June 2000) (footnotes omitted).

B. A Percentage Fee of 25% of the Fund Created Is Reasonable

In *Paul, Johnson*, 886 F.2d at 272, the Ninth Circuit established 25% of a common fund as the "benchmark" award for attorneys' fees. *See also Torrisi*, 8 F.3d at 1376 (reaffirming 25% benchmark); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (same); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 943 (9th Cir. 2011) (same). However, the guiding principle in this Circuit, regardless of the method of award, is that a fee award be "reasonable under the circumstances." *WPPSS*, 19 F.3d at 1295. The Ninth Circuit has announced a number of factors relevant to this determination: (1) the result achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007). As demonstrated below, an award of 25% of the recovery obtained is appropriate.

1. The Result Achieved

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client"); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988) ("The quality of work performed in a case that settles before trial is best measured by the benefit obtained."), *aff'd*, 899 F.2d 21 (11th Cir. 1990).

The result obtained here compares favorably to other securities class action settlements reached in 2013. Lead Counsel's damages consultant has estimated that the maximum recoverable damages in this case are approximately $48.0 million. This figure assumes that the Class prevailed on every liability and damage issue at trial and that the jury accepted all of the assumptions and conclusions of the expert. The amount paid in settlement is approximately 10.4% of this figure. As noted earlier (at p. 2, *supra*), this recovery compares favorably to median percentage recoveries in settlements reached in 2013, the most recent full year for which such statistics are available. This result is all the more noteworthy given the novel risks in this case, including whether the Court had subject matter jurisdiction and factual issues concerning whether Vestas ADRs or domestically traded common stock traded in an efficient market for purposes of establishing the fraud-on-the-market presumption of reliance.

Here, a significant and certain recovery of $5.0 million in cash has been obtained through the efforts of Lead Counsel prior to a decision on the motion to dismiss and the commencement of full blown merits discovery. Thus, substantial expense, delay, risk, and uncertainty have been avoided. Early settlements are encouraged by courts and are consistent with the purposes of the Federal Rules of Civil Procedure, which "'shall be construed and administered to ensure the ***just, speedy, and inexpensive determination*** of every action.'" *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 992 (D. Minn. 2005) (quoting Fed. R. Civ. P. 1) (emphasis in original). The *Xcel* court, in awarding a 25% fee of an $80 million securities class action settlement complimented counsel for the efficient prosecution of the case and the prompt resolution of the litigation.

2. The Risks of the Litigation and the Novelty and Difficulty of the Questions Presented

Numerous cases acknowledge that risk as well as the novelty and difficulty of the issues presented in a case are important factors in determining the adequacy of a fee award. *E.g.*, *Vizcaino*, 290 F.3d at 1048; *WPPSS*, 19 F.3d at 1299-1301. Uncertainty that a recovery would be obtained is highly relevant in determining risk. *WPPSS*, 19 F.3d at 1300. As the court aptly observed in *King Resources*:

> The litigation also involved unique and substantial issues of law in the technical area of SEC Rule 10b-5, . . . difficult, complex and oft-disputed class action questions, and difficult questions regarding computation of damages.
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> * * *
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> In evaluating the services rendered in this case, appropriate consideration must be given to the risks assumed by plaintiffs' counsel in undertaking the litigation. The prospects of success were by no means certain at the outset, and indeed, the chances of success were highly speculative and problematical.

420 F. Supp. at 632, 636-37; *see also In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475-DT (RCx), 2005 U.S. Dist. LEXIS 13627, at *44 (C.D. Cal. June 10, 2005) ("The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award.").

From the outset of this case, a number of contested issues of both fact and law were present and the Class faced formidable defenses to liability and damages. Indeed, at the earliest stage of this case, it became evident that novel legal issues, particularly with respect to the fraud-on-the-market presumption of reliance and whether the Court had subject matter jurisdiction pursuant to *Morrison*, 561 U.S. 247, were two strong defenses. Throughout the litigation, Vestas adamantly denied liability on the basis of these defenses. *See Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir.

2004) (concluding that district court properly weighed risk when it considered defendant's belief that it had a strong case on the merits).

Substantial risks and uncertainties in this type of litigation, and in this case in particular, made it far from certain that any recovery, let alone $5.0 million, would ultimately be obtained. From the outset, this post-PSLRA action was a difficult and uncertain securities case, with no assurance whatsoever that the Action would survive Vestas' attacks on the pleadings, motion(s) for summary judgment, trial and appeal. As the court noted in *Ikon*, 194 F.R.D. at 194-95:

> There were the legal obstacles of establishing scienter, damages, [and] causation . . . . The court also acknowledges that securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA. . . . The Act imposes many new procedural hurdles . . . . It also substantially alters the legal standards applied to securities fraud claims in ways that generally benefit defendants rather than plaintiffs.

The court's statement in *Ikon* is certainly applicable here.[9]

The application of the PSLRA to the Action posed significant risks to Lead Plaintiff's ability to survive Vestas' motion to dismiss.[10] Many cases in this Circuit and in courts across the country

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[9] Even before the passage of the PSLRA, courts had noted that a securities case "by its very nature, is a complex animal." *Clark v. Lomas & Nettleton Fin. Corp.*, 79 F.R.D. 641, 654 (N.D. Tex. 1978), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980); *see also Miller v. Woodmoor Corp.*, No. 74-F-988, 1978 U.S. Dist. LEXIS 15234, at *11-*12 (D. Colo. Sept. 28, 1978):

> The benefit to the class must also be viewed in its relationship to the complexity, magnitude, and novelty of the case. . . .
>
> Despite years of litigation, the area of securities law has gained little predictability. There are few "routine" or "simple" securities actions. . . .

[10] *See* Elliott J. Weiss & Janet E. Moser, *Enter Yossarian: How to Resolve the Procedural Catch-22 that the Private Securities Litigation Reform Act Creates*, 76 Wash. U. L. Q. 457, 459 (1998) (noting that the PSLRA made it more difficult to set forth a claim and survive a motion to dismiss); Eugene Zelensky, *New Bully on the Class Action Block – Analysis of Restrictions on Securities Class Actions Imposed by the Private Securities Litigation Reform Act of 1995*, 73 Notre Dame L. Rev. 1135 (May 1998).

have been dismissed at the pleading stage in response to defendants' arguments that allegations do not meet the PSLRA's heightened pleading standards, making it clear that the risk of no recovery (and hence no fee) has increased exponentially. According to an April 2006 NERA study conducted after the PSLRA went into effect, dismissal rates on these type of cases have doubled, accounting for 40.3% of dispositions. *See* Ronald I. Miller, Ph.D., Todd Foster & Elaine Buckberg, Ph.D., *Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead?*, at 4 (NERA Apr. 2006). Lead Plaintiff faced this very same risk in this litigation.

Absent settlement, Lead Counsel faced the substantial risk of years of additional litigation with no guarantee of any compensation, even if Lead Plaintiff prevailed on the merits at the trial court level. Lead Counsel achieved a very good recovery for the Class in the face of very substantial risks. Accordingly, the Court should grant the requested fee.

3. The Skill Required and the Quality and Efficiency of the Work

The "'prosecution and management of a complex national class action requires unique legal skills and abilities.'" *Heritage Bond*, 2005 U.S. Dist. LEXIS 13627, at *39 (citation omitted). Lead Counsel is a nationally known leader in the field of complex securities class actions. The quality of the representation is demonstrated by the substantial benefit achieved for the Class and the efficient and effective prosecution and resolution of this case under challenging circumstances. Lead Counsel engaged in a concerted effort to obtain the maximum recovery for the Class, sparing no expense and committing considerable resources in the research, investigation, and uncovering of facts. Lead Counsel's litigation expenses and charges in prosecuting this case in the interests of the Class exceed $250,000. As a result of Lead Counsel's diligent efforts as well as its skill and reputation, Lead Counsel negotiated a favorable result under difficult and challenging circumstances. Such quality,

efficiency, and dedication should be rewarded. *E.g.*, *J. N. Futia Co. v. Phelps Dodge Indus., Inc.*, No. 78 Civ. 4547, 1982 U.S. Dist. LEXIS 15261 (S.D.N.Y. Sept. 17, 1982).

The quality of opposing counsel is also important in evaluating the quality of the work done by Lead Counsel. *See, e.g.*, *In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977); *King Res.*, 420 F. Supp. at 634; *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Lead Counsel was opposed in this case by highly skilled and respected counsel from Proskauer Rose LLP, a law firm with a well-established reputation for vigorous advocacy in the defense of complex civil cases such as this. Despite the quality of this opposition, Lead Counsel was able to develop and resolve this case on a favorable basis for the Class.

4. The Contingent Fee Nature of the Case and the Financial Burden Carried by Lead Counsel

A determination of a fair fee must include consideration of the contingent nature of the fee and the difficulties which were overcome in obtaining the settlement.

> It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* §21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.

WPPSS, 19 F.3d at 1299.

In awarding counsel's attorneys' fees in *In re Prudential-Bache Energy Income P'ships Sec. Litig.*, No. MDL 888, 1994 U.S. Dist. LEXIS 6621 (E.D. La. May 18, 1994), the court noted the risks that plaintiffs' counsel had taken:

> Although today it might appear that risk was not great based on Prudential Securities' global settlement with the Securities and Exchange Commission, such was not the case when the action was commenced and throughout most of the litigation. Counsel's contingent fee risk is an important factor in determining the fee

> award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

Id. at *16.

The risk of no recovery in complex cases of this type is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. As the court in *Xcel* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *Xcel Energy*, 364 F. Supp. 2d at 994. Even plaintiffs who get past summary judgment and succeed at trial may find their judgment overturned on appeal or on a post-trial motion.[11]

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result. Lead Counsel committed significant resources of both time and money to the vigorous and successful prosecution of the Action for the benefit of the Class. The contingent nature of counsel's representation favors approval of the requested fee.

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[11] *See, e.g.*, *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486-CW(EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict by jury); *In re BankAtlantic Bancorp, Sec. Litig.*, No. 07-61542-CIV-UNGARO, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (court granted defendants' judgment as a matter of law on the basis of loss causation, overturning jury verdict and award in plaintiff's favor), *aff'd*, 688 F.3d 713 (11th Cir. 2012); *Robbins*, 116 F.3d at 1448-49 (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 U.S. Dist. LEXIS 15608, at *1-*2 (N.D. Cal. Sept. 6, 1991) (verdict against two individual defendants, but court vacated judgment on motion for judgment notwithstanding the verdict).

5. A 25% Fee Award Is Consistent with the Awards in Similar Complex, Contingent Litigation

Courts often look to fees awarded in comparable cases to determine if the fee requested is reasonable. *See Vizcaino*, 290 F.3d at 1050 n.4. As demonstrated by the decisions cited in Appendix A attached hereto, a fee of 25% or more has been repeatedly awarded by the courts in this Circuit and district and in numerous other similar cases throughout the country.

The requested fee is less than the median fee award for securities cases in an analysis of fee awards conducted in 2013 by NERA. Using data from securities class actions from 1996 through 2013, the study found that for settlements between $5 million and $10 million, the median fee award was 30% of the settlement amount. NERA Report, *supra*, at 34, Figure 34. Further, the requested fee is in line with rates analyzed in a Federal Judicial Center study released in 1996, which covered all class actions in four selected federal district courts with a high number of class actions and found that as to the size of attorneys' fees: "Median rates ranged from 27% to 30%." Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, at 69 (Federal Judicial Center 1996).

C. The Requested Fee Is Reasonable Under a Lodestar Cross-Check Analysis

Although Lead Counsel seeks an award of a fee based on a percentage of the recovery, "[a]s a final check on the reasonableness of the requested fees, courts often compare the fee counsel seeks as a percentage with what their hourly bills would amount to under the lodestar analysis." *Omnivision*, 559 F. Supp. 2d at 1048. In *Vizcaino*, the Ninth Circuit noted that an analysis of the "lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than

may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." 290 F.3d at 1050 n.5.

Here, Lead Plaintiff's counsel committed 2,425.26 hours of attorney and paraprofessional time prosecuting this Action on behalf of the Class. The resulting lodestar is $1,368,074.10.[12] The requested fee of 25% equals $1,250,000. Thus, the requested fee represents a ***negative*** multiplier of approximately .91. In *Vizcaino*, the Ninth Circuit approved a 28% fee that resulted in a 3.65 multiplier. 290 F.3d at 1052-54 (finding multipliers ranged as high as 19.6 though most run from 1.0-4.0); *see also In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) ("'In recent years multipliers of between 3 and 4.5 have been common' in federal securities cases.") (citations omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) ("modest multiplier of 4.65 is fair and reasonable"); *Xcel*, 364 F. Supp. 2d at 998-99 (awarding 25% of $80 million settlement fund, representing a 4.7 multiplier). Accordingly, the negative multiplier present here supports a finding that the requested fee is reasonable.

D. The Reaction of the Class and the Approval of the Requested Percentage by the Lead Plaintiff Supports the Award of a 25% Fee

Pursuant to this Court's Preliminary Approval Order (Doc. 126), the Notice was mailed to over 80,000 Class Members who could be identified with reasonable effort and their nominees commencing on August 15, 2014. Sylvester Decl., ¶10. The Notice advised the Class of the terms of the fee and expense application. Comments on, or objections to, either are due on or before November 19, 2014. Lead Counsel will respond to any such filings on or before December 2, 2014. To date, there have been no objections to the requested fees and expenses.

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[12] *See* Rosen Decl., ¶4 and Declaration of Mark A. Friel Filed on Behalf of Stoll Stoll Berne Lokting & Schlachter PC in Support of Application for Award of Attorneys' Fees and Expenses ("Friel Decl."), ¶4, submitted herewith.

At least as important as the reaction of the Class is the fact that a 25% fee request has been approved by the Court-appointed Lead Plaintiff. *See* Morgan Decl., ¶5. The fact that the fee has been approved by Lead Plaintiff should be given significant weight. *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

VII. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel also requests payment of $250,000 of their litigation expenses and charges in connection with the prosecution of the Action. Lead Counsel's and Liaison Counsel's expenses or charges in the Action total $300,841.93. These expenses are set forth in the Rosen Declaration and the Friel Declaration, submitted to the Court herewith.

In determining which expenses are compensable in a common fund case, the Court should consider whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'") (citation omitted). Therefore, it is proper to pay reasonable expenses even though they are greater than taxable costs. *Id.*; *see also Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses compensable if they would normally be billed to client); *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993) ("Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they 'were incidental and necessary to the representation' of those clients.") (citation omitted). The categories of expenses for which counsel

seek payment here are the type of expenses routinely charged to clients paying on an hourly basis and, therefore, should be awarded out of the common fund.

Of the total expenses, $177,453.29 (or about 59%) was spent on economic and corporate governance experts or consultants, and an investigator. These firms or individuals, the amounts paid to them and the work they did are briefly described in the Rosen Declaration at ¶6(g). An additional significant expense was the fees of the two mediators (totaling $36,304.97) who assisted in resolving the case. *See id.*, ¶6(f).

Finally, Lead Plaintiff's counsel had expenses associated with access to various computer databases for factual and legal research; hotel, meal, and transportation costs associated with travel for court hearings, document productions and mediation sessions; photocopying costs; filing or witness fees; postage; overnight delivery services; long distance telephone or facsimile charges; and the publication of the "early notice" required by the PSLRA. As attested to by Lead Plaintiff's counsel, these expenses were reasonable in amount and necessary for the effective prosecution of the Action.

VIII. CONCLUSION

For all the foregoing reasons, Lead Plaintiff and Lead Counsel respectfully request that the Court approve the Settlement and Plan of Allocation as fair, reasonable and adequate, and in the best interest of the Class. Lead Plaintiff and Lead Counsel also respectfully request that the Court approve Lead Counsel's application for attorneys' fees and expenses, together with interest thereon at the same rate and for the same time as earned on the Settlement Amount.

DATED: November 4, 2014

Respectfully submitted,

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Additional Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2014, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 4, 2014.

s/ TRIG R. SMITH
TRIG R. SMITH

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Mailing Information for a Case 3:11-cv-00585-MO In re: Vestas Wind Systems A/S Securities Litigation

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Manual Notice List

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- (No manual recipients)

APPENDIX A

2004 To The Present
Cases In Which Award Of Fees Equalled Or Exceeded
25% Of The Fund Plus Expenses (with Settlement Amounts)

1. *In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn. June 30, 2014) (awarded fees of 33-1/3% of $73 million recovery, plus expenses);

2. *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595 (M.D. Tenn. May 12, 2014) (awarded fees of 33-1/3% of $3.25 million, plus expenses);

3. *Landmen Partners Inc. v. Blackstone Group*, No. 08-cv-03601-HB-FM (S.D.N.Y. Dec. 18, 2013) (awarded fees of 33-1/3% of $85 million recovery, plus expenses);

4. *Eshe Fund v. Fifth Third Bancorp*, No. 1:08-cv-421 (S.D. Ohio Nov. 20, 2013) (awarded fees and expenses of 33-1/3% of $16 million recovery);

5. *In re Constellation Energy Group, Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB (D. Md. Nov. 4, 2013) (awarded fees of 33-1/3% of $4 million recovery, plus expenses);

6. *Levine v. Atricure, Inc.*, No. 1:06-cv-14324-RJH (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of $2 million recovery, plus expenses);

7. *In re Noah Educ. Holdings Ltd. Sec. Litig.*, No. 1:08-cv-09203 (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of $1.75 million recovery, plus expenses);

8. *Eaton v. Halifax PLC*, No. MON-L-2365-03 (Monmouth Cnty. NJ Super. Ct. May 26, 2011) (awarded fees of 33-1/3% of $8.6 million recovery, plus expenses);

9. *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV00409(DJS) (D. Conn. Jan. 25, 2011) (awarded fees of 33-1/3% of $2 million recovery, plus expenses);

10. *Moorhead v. CONSOL Energy, Inc.*, No. 2:03-cv-01588-TFM (W.D. Pa. May 14, 2007) (awarded fees of 33-1/3% of $2.7 million recovery; plus expenses);

11. *Wade v. Bayer AG, et al.*, No. CT-004748-06 (Shelby County, Tenn. Cir. Ct. Dec. 7, 2006) (awarded fees of 33-1/3% of $3.7 million recovery, plus expenses);

12. *In re Van der Moolen Holding N.V. Sec. Litig.*, No. 1:03-CV-8284 (S.D.N.Y. Dec. 6, 2006) (awarded fees of 33-1/3% of $8 million recovery, plus expenses);

13. *In re Interpool, Inc. Sec. Litig.*, No. 3:04-cv-00321-SRC (D.N.J. Sept. 9, 2006) (awarded fees of 33-1/3% of $1 million recovery, plus expenses);

14. *Denver Area Meat Cutters and Employers Pension Plan v. James L. Clayton, et al.*, Case No. E-19723 (Blount County Tenn. June 8, 2005) (awarded fees of 33-1/3% of $5 million recovery, plus expenses);

15. *Lezin v. MiniMed, Inc., et al.*, Case No. BC251832 (Los Angeles Super. Ct. Aug. 10, 2004) (awarded fees of 33-1/3% of $1.25 million recovery, plus expenses);

16. *Franks v. Cheap Tickets, Inc., et al.*, Civil No. 01-1-2376-08-DDD (1st Cir. Haw. July 2, 2004 (awarded fees of 33-1/3% of $1 million recovery, plus expenses);

17. *Conlee v. WMS Industries*, No. 1:11-cv-03503-JBZ (N.D. Ill. May 20, 2014) (awarded fees of 33% of $3.7 million recovery, plus expenses);

18. *In re State Street Bank and Trust Co. Fixed Income Funds Inv. Litig.*, No. 1:08-cv-08235-PAC (S.D.N.Y. Sept. 6, 2012) (awarded fees of 33% of $6.25 million recovery, plus expenses);

19. *Schultz v. Applica, Inc.*, No. 06-60149-CIV (S.D. Fla. Jan. 15, 2008) (awarded fees of 33% of $2 million recovery, plus expenses);

20. *In re Canadian Superior Energy Inc. Sec. Litig.*, Master File No. 04-CV-02020(RO) (S.D.N.Y. Oct. 19, 2005) (awarded fees of 33% of $3.2 million recovery, plus expenses);

21. *Thomas & Thomas Rodmakers Inc., et al. v. Newport Adhesives and Composites, Inc., et al.*, Case No. CV-99-07796-FMC(RNBx) (C.D. Cal. Oct. 17, 2005) (awarded fees of 33% of $36.25 million recovery, plus expenses);

22. *Roth v. Aon Corp.*, No. 04-C-6835 (N.D. Ill. Nov. 18, 2009) (awarded fees of 31% of $30 million recovery, plus expenses);

23. *Board of Trustees of the Operating Engineers Pension Trust v. JPMorgan Chase Bank*, No. 09-cv-09333-KBF (S.D.N.Y. November 20, 2013) (awarded fees of 30% of $23 million recovery, plus expenses);

24. *Fisher v. Suffolk*, No. 1:11-cv-05114-SJ-RML (E.D.N.Y. Nov. 19, 2013) (awarded fees of 30% of $2.8 million recovery, plus expenses);

25. *Buettgen v. Harless*, No. 3:09-cv-00791-K (N.D. Tex. Nov. 13, 2013) (awarded fees of 30% of $33.75 million recovery, plus expenses);

26. *Luman v. Anderson*, No. 4:08-cv-00514-C-W-HFS (W.D. Mo. July 23, 2013) (awarded fees of 30% of $4.25 million recovery, plus expenses);

27. *Hildenbrand v. W Holding*, No. 07-1886 (JAG) (D. P.R. June 10, 2013) (awarded fees of 30% of $8.75 million recovery, plus expenses);

28. *Citiline Holdings, Inc. v. iStar Fin. Inc.*, No. 1:08-cv-03612-RJS (S.D.N.Y. Apr. 5, 2013) (awarded fees of 30% of $29 million recovery, plus expenses);

29. *In re Constar Int'l Sec. Litig.*, No. 03cv05020 (E.D. Pa. Dec. 19, 2012) (awarded fees of 30% of $23.5 million recovery, plus expenses);

30. *Siracusano v. Matrixx Initiatives, Inc.*, No. CV-04-0886-PHX-NVW (D. Ariz. Nov. 13, 2012) (awarded fees of 30% of $4.5 million recovery, plus expenses);

31. *Winslow v. BancorpSouth, Inc.*, No. 3:10-cv-00463 (M.D. Tenn. Oct. 31, 2012) (awarded 30% of $29.25 million recovery, plus expenses);

32. *Szymborski v. Ormat Techs., Inc.*, No. 3:10-CV-132-RCJ (D. Nev. Oct. 16, 2012) (awarded fees of 30% of $3.1 million recovery, plus expenses);

33. *City of Ann Arbor Emps.' Ret. Sys. v. Sonoco Prods. Co., et al.*, No. 4:08-cv-02348-TLW-KDW (D.S.C. Sept. 7, 2012) (awarded fees of 30% of $13 million recovery, plus expenses);

34. *In re Sturm, Ruger & Co., Inc. Sec. Litig.*, No. 3:09-cv-01293-VLB (D. Conn. Aug. 20, 2012) (awarded fees of 30% of $3 million recovery, plus expenses);

35. *Local 731 I.B. of T. Excavators and Pavers Pension Trust Fund v. Swanson*, No. 1:09-cv-00799-MMB (D. Del. June 22, 2012) (awarded 30% of $25 million recovery, plus expenses);

36. *In re Focus Media Holding Ltd. Litig.*, No. 1:07-cv-10617-LTS(GWG) (S.D.N.Y. Apr. 25, 2012) (awarded fees of 30% of $2 million recovery, plus expenses);

37. *Western Wash. Laborers-Employers Pension Trust v. Panera Bread Co., et al.*, No. 4:08-cv-00120 ERW (E.D. Mo. June 22, 2011) (awarded fees of 30% of $5.75 million recovery, plus expenses);

38. *Norfolk Cnty. Ret. Sys. v. Ustian*, No. 1:07-cv-07014 (N.D. Ill. May 25, 2011) (awarded fees of 30% of $13 million recovery, plus expenses);

39. *In re Orion Sec. Litig.*, No. 1:08-cv-01328-RJS (S.D.N.Y. Apr. 14, 2011) (awarded fees of 30% of $3.25 million recovery, plus expenses);

40. *Schultz v. Tomotherapy, Inc.*, No. 08-cv-000314-SLC (W.D. Wis. Mar. 22, 2011) (awarded fees of 30% of $5 million recovery, plus expenses);

41. *In re L.G. Philips LCD Co., Ltd. Sec. Litig.*, No. 1:07-cv-00909-RJS (S.D.N.Y. Mar. 17, 2011) (awarded fees of 30% of $18 million recovery, plus expenses);

42. *In re Gilead Sciences Sec. Litig.*, No. C-03-4999-SI (N.D. Cal. Nov. 5, 2010) (awarded 30% of $8.25 million recovery, plus expenses);

43. *Beach v. Healthways, Inc.*, No. 3:08-cv-00569 (M.D. Tenn. Sept. 27, 2010) (awarded fees of 30% of $23.6 million recovery, plus expenses);

44. *In re TeleTech Litigation*, No. 1:08-cv-00913-LTS (S.D.N.Y. June 11, 2010) (awarded fees of 30% of $11 million recovery, plus expenses);

45. *In re PETCO Animal Supplies, Inc. S'holder Litig.*, No. GIC 869399 (San Diego Super. Ct. Mar. 26, 2010) (awarded fees of 30% of $16 million recovery, plus expenses);

46. *Kelleher v. ADVO, Inc.*, No. 3:06-cv-01422-AVC (D. Conn. Mar. 3, 2010) (awarded fees of 30% of $12.5 million recovery, plus expenses);

47. *Hawaii Structural Ironworkers Pension Trust Fund v. Calpine Corp.*, No. 1-04-CV-021465 (Santa Clara Super. Ct. Feb. 3, 2010) (awarded fees of 30% of $43 million recovery, plus expenses);

48. *In re Prestige Brands Holdings, Inc. Sec. Litig.*, No. 7:05-cv-06924-CS (S.D.N.Y. Dec. 7, 2009) (awarded fees of 30% of $11 million recovery, plus expenses);

49. *Rines v. Heelys, Inc.*, No. 3:07-cv-01468-K (N.D. Tex. Nov. 17, 2009) (awarded fees of 30% of $7.5 million recovery, plus expenses);

50. *Aviva Partners LLC v. Exide Techs.*, No. 3:05-cv-03098-MLC-LHG (D.N.J. June 23, 2009) (awarded fees of 30% of $13.7 million recovery, plus expenses);

51. *W. Pa. Elec. Employees Pension Fund v. Candela Corp.*, No. 1:08-cv-10551-DPW (D. Mass. June 23, 2009) (awarded fees of 30% of $3.85 million recovery, plus expenses);

52. *Crowell v. Mannatech, Inc.*, No. 3:07-cv-00238-K (N.D. Tex. Mar. 10, 2009) (awarded fees of 30% of $11.25 million recovery, plus expenses);

53. *In re LaBranche Sec. Litig.*, No. 03-CV-8201(RWS) (S.D.N.Y. Jan. 22, 2009) (awarded fees of 30% of $13 million recovery, plus expenses);

54. *In re OSI Pharm., Inc. Sec. Litig.*, No. 2:04-CV-05505-JS-WDW (E.D.N.Y. Aug. 22, 2008) (awarded fees of 30% of $9 million recovery, plus expenses);

55. *In re ChoicePoint, Inc. Sec. Litig.*, No. 1:05-CV-00686-JTC (N.D. Ga. July 21, 2008) (awarded fees of 30% of $10 million recovery, plus expenses);

56. *Cement Masons & Plasters Joint Pension Trust v. TNS Inc.*, No. 1:06-cv-00363-CMH-BRP (E.D. Va. June 20, 2008) (awarded fees of 30% of $3.6 million recovery, plus expenses);

57. *Croker v. Carrier Access Corp.*, No. 1:05-cv-01011-LTB-OES (D. Colo. Jan. 25, 2008) (awarded fees of 30% of $7.4 million recovery, plus expenses);

58. *In re UICI Sec. Litig.*, No. 3:04-CV-1149-P (N.D. Tex. Jan. 23, 2008) (awarded fees of 30% of $6.9 million recovery, plus expenses);

59. *In re Terayon Commc'n Sys., Inc. Sec. Litig.*, No. C-00-1967-MHP (N.D. Cal. Oct. 3, 2007) (awarded fees of 30% of $15 million recovery, plus expenses);

60. *In re aaiPharma Inc. Sec. Litig.*, No. 7:04-CV-27-D (E.D. N.C. Oct. 2, 2007) (awarded fees of 30% of $7.55 million recovery, plus expenses);

61. *In re Acclaim Entm't Sec. Litig.*, No. 2:03-CV-1270(JS)(ETB) (E.D.N.Y. Oct. 2, 2007) (awarded fees of 30% of $13.65 million recovery, plus expenses);

62. *In re Odimo, Inc. Sec. Litig.*, No. 0512500 (Broward County Fla. Super. Ct. Sept. 25, 2007) (awarded fees of 30% of $1.25 million recovery, plus expenses);

63. *In re eMachines, Inc. Merger Litig.*, No. 01-CC-00156 (Orange County Super. Ct. July 25, 2007) (awarded fees of 30% of $24 million recovery, plus expenses);

64. *In re Direct Gen. Corp. Sec. Litig.*, No. 3:05-0077 (M.D. Tenn. July 20, 2007) (awarded fees of 30% of $14.94 million recovery, plus expenses);

65. *The Takara Trust v. Molex Incorporated, et al.*, No. 05-C-1245 (N.D. Ill. Mar. 1, 2007) (awarded fees of 30% of $10.5 million recovery, plus expenses);

66. *Underwood, et al. v. Lampert, et al.*, No. 1:02-cv-21154-CMA/Turnoff (S.D. Fla. Jan. 29, 2007) (awarded fees of 30% of $1.5 million recovery, plus expenses);

67. *In re AMERCO Sec. Litig.*, No. 04-2182-PHX-RJB (D. Ariz. Nov. 2, 2006) (awarded fees of 30% of $7 million recovery; plus expenses);

68. *Greater Pennsylvania Carpenters Pension Fund v. Whitehall Jewellers, Inc., et al.*, No. 04 C 1107 (N.D. Ill. July 24, 2006) (awarded fees of 30% of $7.5 million recovery, plus expenses);

69. *In re Stellent, Inc. Sec. Litig.*, Master File No. CV-03-4384 RHK/AJB (D. Minn. Nov. 16, 2005) (awarded fees of 30% of $12 million recovery, plus expenses);

70. *In re Descartes Systems Group, Inc. Sec. Litig.*, Master File No. 04 Civ. 3793(LTS)(MHD) (S.D.N.Y. Sept. 16, 2005) (awarded fees of 30% of $1.5 million recovery, plus expenses);

71. *Brody v. Hellman*, Case No. 00-CV-4142 (City & County Denver Colo. Aug. 30, 2005) (awarded fees of 30% of $50 million recovery, plus expenses);

72. *In re Daisytek International Litig.*, Master Docket No. 4:03-CV-212 (E.D. Tex. July 20, 2005) (awarded fees of 30% of $6 million recovery, plus expenses);

73. *In re Novell, Inc. Sec. Litig.*, Case No. 2:99-CV-995 TC (D. Utah May 26, 2005) (awarded fees of 30% of $13.9 million recovery, plus expenses);

74. *Deckler v. Ionics, Inc., et al.*, No. 03-CV-10393-WGY (D. Mass. Apr. 4, 2005) (awarded fees of 30% of $3 million recovery, plus expenses);

75. *Southland Securities Corporation v. INSpire Insurance Solutions, Inc.*, No. 4:00-CV-355y (N.D. Tex. Mar. 9, 2005) (awarded fees of 30% of $4.8 million recovery, plus expenses);

76. *Steinbeck v. Sonic Innovations, Inc., et al.*, Case No. 2:00-CV-848-PGC (D. Utah May 25, 2004 (awarded fees of 30% of $7 million recovery, plus expenses);

77. *Broderick v. Mazur (PHP Healthcare)*, No. CV-98-1658-MRP(AJWx) (C.D. Cal. Apr. 27, 2004) (awarded fees of 30% of $4.5 million recovery, plus expenses);

78. *Ronconi v. Larkin*, Case No. 767087-5 OV (Alameda County Super. Ct. Jan. 6, 2004) (awarded fees of 30% of $2.5 million recovery, plus expenses);

79. *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.*, Case No. CV-99-07796-FMC(RNx) (C.D. Cal. Jan. 31, 2005) (awarded fees of 29% of $32.75 million recovery, plus expenses);

80. *In re Accredo Health, Inc. Sec. Litig.*, No. 03-CV-2216 (W.D. Tenn. Feb. 19, 2009) (awarded fees of 28% of $33 million recovery, plus expenses);

81. *Olmsted v. ADAC Laboratories*, Case No. CV793923 (Santa Clara Super. Ct. May 10, 2004) (awarded fees of 28% of $3.55 million recovery, plus expenses);

82. *In re Sanofi-Aventis Sec. Litig.*, No. 1:07-cv-10279-GBD (S.D.N.Y. Jan. 22, 2014) (awarded fees of 27.5% of $40 million recovery, plus expenses);

83. *In re Coventry Healthcare, Inc. Sec. Litig.*, No. 8:09-cv-02337-AW (D. Md. Oct. 29, 2013) (awarded fees of 27.5% of $10 million recovery, plus expenses);

84. *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519(AET) (D.N.J. Jan. 30, 2013) (awarded fees of 27.5% of $164 million recovery, plus expenses);

85. *Silverman v. Motorola, Inc.*, No. 07 C 4507 (N.D. Ill. May 7, 2012) (awarded fees of 27.5% of $200 million recovery, plus expenses);

86. *Cornwell v. Credit Suisse Group*, No. 08-cv-03758(VM) (S.D.N.Y. July 20, 2011) (awarded fees of 27.5% of $70 million recovery, plus expenses);

87. *Ross v. Abercrombie & Fitch Co.*, No. 2:05-cv-00819-EAS-TPK (S.D. Ohio Sept. 24, 2010) (awarded fees of 27.5% of $12 million recovery, plus expenses);

88. *Indiana State District Council of Laborers & HOD Carriers Pension Fund v. Brukardt*, No. 05-1392-II (Tenn. Chancery Ct. May 13, 2013) (awarded fees of 27% of $4 million recovery, plus expenses);

89. *Brown v. Brewer, et al.*, No. 2:06-cv-03731-GHK-SH (C.D. Cal. Mar. 19, 2012) (awarded fees of 27% of $45 million recovery, plus expenses);

90. *Hoff v. Popular Inc.*, No. 3:09-cv-01428-GAG (D.P.R. Nov. 2, 2011) (awarded fees of 27% of $37.5 million recovery, plus expenses);

91. *In re Infineon Techs. AG Sec. Litig.*, No. C-04-4156-JW (N.D. Cal. Nov. 2, 2011) (awarded fees of 27% of $6.2 million recovery, plus expenses);

92. *Thurber v. Mattel, Inc.*, No. CV-99-10368-MRP(CWx) (C.D. Cal. Oct. 1, 2003) (fee equal to 27% of $122 million recovery, plus expenses);

93. *Massachusetts Bricklayers & Masons Trust Funds v. Deutsche Alt-A Sec., Inc.*, No. 2:08-cv-03178-LDW-ARL (E.D.N.Y. July 11, 2012) (awarded 26.5% of $32.5 million recovery, plus expenses);

94. *In re CIT Grp. Inc. Sec. Litig.*, No. 1:08-cv-06613-BSJ-THK (S.D.N.Y. June 13, 2012 (awarded 26.5% of $75 million recovery, plus expenses);

95. *Plumbers' Union Local No. 12 Pension Fund v. Nomura Asset Acceptance Corp.*, No. 08-cv-10446 (D. Mass. Dec. 19, 2013) (awarded fees of 25% of $21.2 million recovery, plus expenses);

96. *Plumbers & Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Northwest Pipe Co.*, No. 3:09-cv-05724-RBL (W.D. Wash. Mar. 22, 2013) (awarded fees of 25% of $12.5 million recovery, plus expenses);

97. *Int'l Bhd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech.*, No. 3:09-cv-00419-MMD-WGC (D. Nev. Oct. 19, 2012) (awarded fees of 25% of $12.5 million recovery, plus expenses);

98. *Plumbers & Pipefitters Local Union No. 630 Pension-Annuity Trust Fund v. Allscripts-Misys Healthcare Solutions, Inc.*, No. 1:09-cv-04726 (N.D. Ill. July 12, 2012) (awarded 25% of $10.15 million recovery, plus expenses);

99. *Maiman v. Talbott*, No. SACV 09-0012-AG(ANx) (C.D. Cal. July 9, 2012) (awarded 25% of $8.25 million recovery, plus expenses);

100. *In re Accuray Inc. Sec. Litig.*, No. 4:09-cv-03362-CW (N.D. Cal. Dec. 8, 2011) (awarded fees of 25% of $13.5 million recovery, plus expenses);

101. *In re Agria Corp. Sec. Litig.*, No. 1:08-cv-03536-WHP (S.D.N.Y. June 7, 2011) (awarded fees of 25% of $3.75 million recovery, plus expenses);

102. *City of Roseville Emp. Ret. Sys. v. Micron Tech., Inc.*, No. 06-CV-85-WFD (D. Idaho Apr. 28, 2011) (awarded fees of 25% of $42 million recovery, plus expenses);

103. *The City of Hialeah Employees' Ret. Sys. v. Toll Bros., Inc.*, No. 07-1513 (E.D. Pa. Mar. 4, 2011) (awarded fees of 25% of $25 million recovery, plus expenses);

104. *In re America Service Group, et al.*, No. 3:06-cv-00323 (M.D. Tenn. Oct. 15, 2010) (awarded fees of 25% of recovery (worth $14,895,000 in cash and stock), plus expenses);

105. *Belodoff v. Netlist, Inc.*, No. SACV-07-00677-DOC(MLGx) (C.D. Cal. Sept. 30, 2010) (awarded fees of 25% of $2.6 million recovery, plus expenses);

106. *Charatz v. Avaya, Inc.*, No. 3:05-cv-02319 (D.N.J. Sept. 27, 2010) (awarded fees of 25% of $4.5 million recovery, plus expenses);

107. *Lefkoe v. Jos. A. Bank Clothiers, Inc.*, No. 1:06-cv-01892-WMN (D. Md. July 28, 2010) (awarded 25% of $4 million recovery, plus expenses);

108. *Ryan v. Flowserve Corp.*, No. 3:03-CV-01769-B (N.D. Tex. May 11, 2010) (awarded 25% of $55 million recovery, plus expenses);

109. *Twinde v. Threshold Pharms., Inc.*, No. 4:07-cv-04972-CW (N.D. Cal. Apr. 16, 2010) (awarded 25% of $10 million recovery, plus expenses);

110. *City of Westland Police and Fire Retirement System v. Sonic Solutions*, No. C 07-05111-CW (N.D. Cal. Apr. 8, 2010) (awarded 25% of $5 million recovery, plus expenses);

111. *Batwin v. Occam Networks, Inc.*, No. 2:07-cv-02750-CAS(SHx) (C.D. Cal. Feb. 22, 2010) (awarded 25% of $13.945 million recovery, plus expenses);

112. *Tsirekidze v. Syntax-Brillian Corp.*, No. 2:07-cv-02204-FJM (D. Ariz. Feb. 18, 2010) (awarded 25% of $10 million recovery, plus expenses);

113. *In re Metawave Commc'ns Sec. Litig.*, No. 02-cv-00625-RSM (W.D. Wash. Feb. 11, 2010) (awarded 25% of $1.5 million recovery, plus expenses);

114. *In re 21st Century Holding Co. Sec. Litig.*, No. 07-61057-Civ-COHN/SELTZER (S.D. Fla. Jan. 29, 2010) (awarded 25% of $2.24 million recovery, plus expenses);

115. *West Palm Beach Firefighters' Pension Fund v. StarTek, Inc.*, No. 05-cv-01265-WDM-MEH (D. Colo. Dec. 21, 2009) (awarded 25% of $7.5 million recovery, plus expenses);

116. *In re Dura Pharms., Inc. Sec. Litig.*, No. 99-CV-0151-JLS(WMC) (S.D. Cal. Dec. 4, 2009) (awarded fees of 25% of $14 million recovery, plus expenses);

117. *In re Seracare Life Sciences, Inc. Sec. Litig.*, No. 05-CV-2335-JLS(CAB) (S.D. Cal. July 17, 2009) (awarded 25% of $1.6 million recovery, plus expenses);

118. *In re Ace Ltd. Sec. Litig.*, No. 05-md-1675 (E.D. Pa. June 10, 2009) (awarded 25% of $1.95 million recovery, plus expenses);

119. *Darquea v. Jarden Corp.*, No. 1:06-cv-00722(RPP) (S.D.N.Y. May 18, 2009) (awarded 25% of $8 million recovery, plus expenses);

120. *In re Impax Labs., Inc. Sec. Litig.*, No. C-04-4802-JW (N.D. Cal. May 12, 2009) (awarded 25% of $9 million recovery, plus expenses);

121. *Parkside Capital Ltd. v. Xerium Techs. Inc.*, No. 06-10991-RWZ (D. Mass. Feb. 26, 2009) (awarded 25% of $3.6 million recovery, plus expenses);

122. *In re Sunterra Corp. Sec. Litig.*, No. 2:06-cv-00844-BES-RJJ (D. Nev. Feb. 10, 2009) (awarded 25% of $8 million recovery, plus expenses);

123. *In re Brocade Sec. Litig.*, No. C 05-02042 CRB (N.D. Cal. Jan. 26, 2009) (awarded 25% of the recovery, plus expenses);

124. *In re Bridgestone Sec. Litig.*, No. 3:01-0017 (M.D. Tenn. Jan. 23, 2009) (awarded 25% of $30 million recovery, plus expenses);

125. *In re Wireless Facilities, Inc. Sec. Litig.*, No. 04cv1589 NLS (S.D. Cal. Jan. 13, 2009) (awarded 25% of $12 million recovery, plus expenses);

126. *In re Wireless Facilities, Inc,. Sec. Litig.*, No. 07cv482 NLS (S.D. Cal. Dec. 19, 2008) (awarded 25% of $4.5 million recovery, plus expenses);

127. *In re Tommy Hilfiger Sec. Litig.*, No. 1:04-CV-07678-SAS (S.D.N.Y. Oct. 8, 2008) (awarded 25% of $16 million recovery, plus expenses);

128. *In re PETCO Corp. Sec. Litig.*, No. 05-CV-0823 H(RBB) (S.D. Cal. Sept. 2, 2008) (awarded 25% of $20.25 million recovery, plus expenses);

129. *In re DHB Indus., Inc. Class Action Litig.*, No. 2:05-cv-04296-JS-ETB (E.D.N.Y. July 21, 2008) (awarded 25% of recovery, plus expenses);

130. *In re Zale Corporation Sec. Litig.*, No. 3:06-cv-01470-N (N.D. Tex. July 10, 2008) (awarded 25% of $5.9 million recovery, plus expenses);

131. *Reynolds v. Repsol YPF, S.A.*, No. 1:06-cv-00733-DAB (S.D.N.Y. May 7, 2008) (awarded 25% of $8 million recovery, plus expenses);

132. *Sekuk Global Enters. v. KVH Indus., Inc.*, No. CA-04-306L (D.R.I. Jan. 25, 2008) (fee equal to 25% of $5 million recovery, plus expenses);

133. *In re SeraCare Life Sciences, Inc. Sec. Litig.*, No. 05-CV-2335-H(CAB) (S.D. Cal. Sept. 4, 2007) (awarding 25% of $3 million recovery, plus expenses);

134. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH (N.D. Cal. Aug. 16, 2007) (fee equal to 25% of recovery, plus expenses);

135. *In re Watchguard Sec. Litig.*, No. 2:05-cv-00678-JLR (W.D. Wash. Aug. 6, 2007) (awarded 25% of $1.75 million recovery, plus expenses);

136. *In re Alliance Gaming Corp. Sec. Litig.*, No. CV-S-04-0821-BES-PAL (D. Nev. June 28, 2007) (awarding 25% of $15.5 million recovery, plus expenses);

137. *Dutton v. D&K Healthcare Res., Inc.*, No. 4:04-CV-00147-SNL (E.D. Mo. June 5, 2007) (awarding 25% of $18.7 million recovery, plus expenses);

138. *In re Vicuron Pharms., Inc. Sec. Litig.*, No. 04-2627 (E.D. Pa. May 31, 2007) (awarded 25% of $12.75 million recovery, plus expenses);

139. *In re Verisign, Inc. Sec. Litig.*, No. C-02-2270-JW(PVT) (N.D. Cal. Apr. 24, 2007) (awarded 25% of $80 million recovery, plus expenses);

140. *In re Amerada Hess Corp. Sec. Litig.*, No. 2:02cv03359 (D.N.J. Apr. 16, 2007) (awarded 25% of $9 million recovery, plus expenses);

141. *Heller v. Quovadx, Inc.*, No. 04-cv-00665 (D. Colo. Apr. 13, 2007) (awarded 25% of $9 million recovery, plus expenses);

142. *In re Charlotte Russe Holding, Inc. Sec. Litig.*, No. 04cv2528 (S.D. Cal. Aug. 30, 2006) (awarded 25% of $3.9 million recovery, plus expenses);

143. *In re Surebeam Corp. Sec. Litig.*, No. 03-CV-01721-JM(POR) (S.D. Cal. July 17, 2006) (awarded 25% of $32.75 million recovery, plus expenses);

144. *In re U.S. Aggregates, Inc. Sec. Litig.*, No. C-01-1688-CW (N.D. Cal. Apr. 6, 2006) (awarding 25% of $3.5 million recovery, plus expenses);

145. *In re Titan, Inc. Sec. Litig.*, Master File No. 04-CV-0676-LAB(NLS) (S.D. Cal. Dec. 19, 2005) (fee award equal to 25% of $61.5 million recovery, plus expenses);

146. *In re Intershop Communications AG Sec. Litig.*, Master File No. C-01-20333-JW (N.D. Cal. Dec. 5, 2005) (fee award equal to 25% of $2 million recovery, plus expenses);

147. *In re Amazon.Com, Inc. Sec. Litig.*, Master File No. C-01-0358-L (W.D. Wash. Nov. 11, 2005) (fee award equal to 25% of $27.7 million recovery, plus expenses);

148. *In re CVS Corp. Sec. Litig.*, No. C.A. 01-11464(JLT) (D. Mass. Sept. 7, 2005) (fee equal to 25% of recovery, plus expenses);

149. *In re Intermune, Inc. Sec. Litig.*, No. C-03-2954-SI (N.D. Cal. Aug. 26, 2005) (fee award equal to 25% of $10.4 million recovery; plus expenses);

150. *In re Pemstar, Inc. Sec. Litig.*, Master File No. 02-1821 (DWF/SRN) (D. Minn. May 27, 2005) (fee award equal to 25% of $12 million recovery, plus expenses);

151. *In re Ventro Corp. Sec. Litig.*, No. C-01-1287-SBA (N.D. Cal. Mar. 29, 2005) (fee award equal to 25% of $6.935 million recovery; plus expenses);

152. *In re Specialty Laboratories, Inc. Sec. Litig.*, Master File No. CV 02-04352-DDP(RCx) (C.D. Cal. Dec. 28, 2004) (fee award equal to 25% of $12 million recovery, plus expenses);

153. *Brody v. TALX Corporation, et al.*, No. 4:01CV2014-HEA (E.D. Mo. Oct. 6, 2004) (fee equal to 25% of $5.75 million recovery, plus expenses);

154. *In re National Golf Properties, Inc. Sec. Litig.*, Master File No. 02-1383-GHK(RZx) (C.D. Cal. Oct. 4, 2004) (fee award equal to 25% of $4.175 million recovery, plus expenses);

155. *In re Infonet Services Corp. Sec. Litig.*, Master File No. CV-01-10456-NM(CWx) (C.D. Cal. July 26, 2004) (fee equal to 25% of $18 million recovery, plus expenses);

156. *In re Mutual Risk Management Ltd. Sec. Litig.*, Case No. 02CV1110K(POR) (S.D. Cal. July 22, 2004) (fee equal to 25% of $3 million recovery, plus expenses);

157. *In re Accelerated Networks, Inc. Sec. Litig.*, Master File No. CV-01-3585-SJO(MANx) (C.D. Cal. June 28, 2004) (fee equal to 25% of $8 million recovery, plus expenses);

158. *In re DJ Orthopedics, Inc. Sec. Litig.*, Case No. 01-CV-2238-K(RBB) (S.D. Cal. June 21, 2004) (fee equal to 25% of $5.5 million fund, plus expenses);

159. *In re TUT Systems, Inc. Sec. Litig.*, Master File No. C-01-2659-CW (N.D. Cal. May 14, 2004) (fee equal to 25% of $10 million recovery, plus expenses);

160. *In re M&A West, Inc. Sec. Litig.*, Master File No. C-01-0033-SBA (N.D. Cal. Feb. 10, 2004) (fee equal to 25% of $2.615 million recovery, plus expenses).